**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**INCOME TAX REFERENCE No.27 of 1995**

**For Approval and Signature:**
**HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-**

**HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? |
| 2 | To be referred to the Reporter or not ? |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? |
| 5 | Whether it is to be circulated to the civil judge ? |

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**COMMISSIONER OF INCOME TAX - Applicant(s)**
**Versus**
**SHIV AGRO GRAMODYOG INDUSTRIES Pvt. Ltd.- Respondent(s)**

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**Appearance :**
MRS MM BHATT for Applicant(s) : 1,
NOTICE UNSERVED for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA**
**and**
**HONOURABLE MS.JUSTICE H.N.DEVANI**

**Date : 05/12/2005**
**ORAL JUDGMENT**
**(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)**

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following question under Section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income-tax:

> “Whether in the facts and circumstances of the case, the Tribunal is right in law in directing the ITO to carry forward the business loss?

2. The Assessment Year is 1985-86 and the relevant accounting period is calender year 1984.

3. The assessee, a private limited company, had filed return of income declaring a loss of Rs.1,45,600/- on 21st May, 1986 which was due on 30th June, 1985. The assessee had submitted applications for grant of extension from time to time and the last application for extension was submitted on 24th April, 1986 seeking extension of time upto 31st May, 1986. According to the Assessing Officer, the refusal to grant extension had been communicated to the assessee on 8th May, 1986, however, the same had been disputed by the assessee contending that the same had been received on 25th May, 1986 and that the return of income had been submitted on 21st May, 1986 well before that date.

4. Both the Commissioner of Income-tax (Appeals) as well as the Tribunal have, as a matter of fact,

found that the rejection letter was served upon the assessee on 25th May, 1986. The said fact has been accepted by the Revenue and the same is not in dispute.

5. Heard Mrs.M.M.Bhatt, learned Standing Counsel appearing on behalf of the applicant-Revenue. The Board shows the endorsement that the respondent is not served, however, considering the view that the Court is inclined to take in the matter, it is not necessary to await service.

6. Mrs.M.M.Bhatt has invited attention to a decision of this Court rendered in Income Tax Reference No.26 of 1994 in the case of Commissioner of Income-tax Vs. R B Masturlal and Sons P. Ltd. wherein this Court had, in light of the ratio laid down in the decisions of this Court in the case of Commissioner of Income-tax, Gujarat-IV Vs. Gordhanbhai Jethabhai, [1983] 142 ITR 84 (Guj.) and Mehsana Ice & Cold Storage Pvt. Ltd. Vs. Commissioner of Income-tax, Income Tax Reference No.107 of 1993 dated 15th March, 2003, answered the question in favour of the assessee. It was submitted that the controversy in issue stands concluded by the aforesaid decisions.

7. In the circumstances, following the ratio laid down in the aforesaid decisions, the question referred is answered in the affirmative i.e. in favour of the assessee and against the Revenue. The Tribunal was justified in law in directing the Assessing Officer to allow carry forward of the loss determined.

8. The Reference stands disposed of accordingly. There shall be no order as to costs.

**Sd/-**
[ D.A. MEHTA, J ]

**Sd/-**
[ H.N. DEVANI, J ]

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*Bhavesh**